



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on July 6, 2004

NOTICE OF ACTION TAKEN -- DOCKET OST-2004-17733

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: **African International Airways (Proprietary) Limited**

Date Filed: May 6, 2004

Relief requested: Exemption from 49 U.S.C. § 41301 to engage in charter foreign air transportation of property and mail between South Africa, on the one hand, and the United States, on the other hand, and authority to conduct other all-cargo charters in accordance with Part 212 of the Department rules.

If renewal, date and citation of last action: New authority

Applicant representatives: Moffett B. Roller/Lee A. Bauer 202-331-3300

DOT Analyst: Shelita A. Smith—(202) 366-1226

Responsive pleadings: None

DISPOSITION

Action: Approved

Action date: July 6, 2004

Effective dates of authority granted: July 6, 2004 – July 6, 2005

Basis for approval (bilateral agreement/reciprocity): Reciprocity with South Africa

Except to the extent exempted/waived, this authority is subject to the terms, conditions, and limitations indicated:

X Standard exemption conditions (attached)

Special conditions/Partial grant/Denial basis/Remarks: Based on the record in this case, we found that African International Airways is financially and operationally qualified to perform the services authorized above. While South African citizens hold the majority interest in African International Airways, because of the ownership interest of non-homeland citizens, the record in the case does not permit us to make definitive findings that African International Airways is substantially owned and effectively controlled by nationals of South Africa. Specifically, African International Airways is 76% owned by two citizens of South Africa and 24% owned by Intavia Limited, a company wholly owned by two citizens of the United Kingdom.¹ However, we found that it was consistent with the public interest to use our discretion and to waive our ownership and control standard in this instance. After carefully examining the record in this case, we concluded that there was no evidence that the non-homeland ownership of African International Airways would result in its authority being exercised in a manner that would adversely affect U.S. aviation policy or interests. Finally, by Memorandum dated May 17, 2004, the FAA advised us that it knows of no reason why the Department should act unfavorably on African International Airways' application.

Action taken by: Paul L. Gretch, Director
Office of International Aviation

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) the applicant is qualified to perform the proposed operations; (2) our action was consistent with Department policy; (3) grant of the authority was consistent with the public interest; and (4) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

¹ Intavia Limited leases aircraft to African International Airways and provides, under contract, day-to-day management services to the applicant.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR § 385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

An electronic version of this document is available on the World Wide Web at:

http://dms.dot.gov/reports/reports_aviation.asp

Foreign Carrier Exemption Conditions

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- (1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- (2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served;
- (3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any changes to, or termination of, insurance also shall be filed with that office);
- (4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- (5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- (6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: (a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States; or (b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- (8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- (9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- (10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- (11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.